AMENDED IN ASSEMBLY AUGUST 26, 1999

AMENDED IN ASSEMBLY JULY 7, 1999

AMENDED IN ASSEMBLY JUNE 24, 1999

AMENDED IN SENATE JUNE 2, 1999

AMENDED IN SENATE APRIL 14, 1999

SENATE BILL No. 898

Introduced by Senator Dunn
(Coauthor: Senator Sher)

February 25, 1999

An act to amend Sections 10235.22 and 10236 of, and to add Section 10236.1 to, the Insurance Code, relating to long-term care insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 898, as amended, Dunn. Long-term care renewal provisions.

Existing law provides that every individual long-term care insurance policy shall contain a renewal provision that is either guaranteed renewable or noncancelable.

This bill would also require group long-term care policies and certificates to be either guaranteed renewable or noncancelable.

This bill would require approval of the Insurance Commissioner before individual or group long-term care insurance may be offered, sold, issued, or delivered in this state, and would specify the duties of insurers and the commissioner in this regard. This bill would limit premium increases for these policies, as specified, and would provide for a contingent nonforfeiture benefit. The bill would enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that certain premiums and conditions for long-term care insurance shall be subject to the prior approval of the Insurance Commissioner.

SEC. 2. Section 10235.22 of the Insurance Code is amended to read:

~~10235.22. (a) Benefits under individual long-term care insurance policies and certificates shall be deemed reasonable in relation to premiums if the expected loss ratio is at least 60 percent, calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including the following:~~

~~(1) Statistical credibility of incurred claims experience and earned premiums.~~

~~(2) The period for which rates are computed to provide coverage.~~

~~(3) Experienced and projected trends.~~

~~(4) Concentration of experience within early policy duration.~~

~~(5) Expected claim fluctuation.~~

~~(6) Experience refunds, adjustments, or dividends.~~

~~(7) Renewability features.~~

~~(8) All appropriate expense factors.~~

~~(9) Interest.~~

~~(10) Experimental nature of the coverage.~~

~~(11) Policy reserves.~~

~~(12) Mix of business by risk classification.~~

~~(13) Product features, such as long elimination periods, high deductibles, and high maximum limits.~~

~~(b) Relative to premiums increased pursuant to subdivision (b) of Section 10236.1, benefits under individual long-term care insurance policies and certificates shall be deemed reasonable in relation to increased premiums if the lifetime loss ratio is at least 60 percent of the initial premium schedule plus 80 percent of all additions to the initial premium schedule, calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the lifetime loss ratio, due consideration shall be given to all relevant factors, including those listed in paragraphs (1) to (13), inclusive, of subdivision (a).~~

~~(c)~~

10235.22. (a) (1) Relative to premiums increased pursuant to subdivision (b) of Section 10236.1, benefits under individual long-term care insurance policies and certificates shall be deemed reasonable if the sum of the accumulated value of actual incurred claims and the present value of anticipated incurred claims will not be less than the sum of:

(A) Sixty percent of the sum of the accumulated value of initial earned premiums and the present value of anticipated future initial premiums.

(B) Eighty percent of the sum of the accumulated value of prior increased premiums and the present value of future anticipated increased premiums.

(2) The interest rate used shall be the statutory valuation interest rate for the first issue year of the group of policies or certificates under consideration.

(3) In evaluating reasonableness, due consideration shall be given to all relevant factors, including all of the following:

(A) Statistical credibility of incurred claims experience and earned premiums.

(B) The period for which rates are computed to provide coverage.

(C) Experienced and projected trends.

(D) Concentration of experience within early policy duration.

(E) Expected claim fluctuation.

(F) Experience refunds, adjustments, or dividends.

(G) Renewability features.

(H) All appropriate expense factors.

(I) Interest.

(J) Experimental nature of the coverage.

(K) Policy reserves.

(L) Mix of business by risk classification.

(M) Product features, such as long elimination periods, high deductibles, and high maximum limits.

(b) The insurer shall file lifetime projections of earned premiums and incurred claims based on the filed rate increase. Annual values for the five years preceding and the three years following the valuation date shall be provided separately. If the filed rate increase is implemented, the insurer shall file updated projections annually for the next three years and include a comparison of actual results to projected values. The commissioner may extend the period to more than three years if actual results are not consistent with the projected values from prior projections. If the commissioner determines that the actual experience does not adequately match the projected experience and that the incurred claims will not exceed proportions of premiums specified in this section, the commissioner may require the insurer to implement any of the following:

(1) Benefit modifications.

(2) Premium rate schedule adjustments.

(3) Other measures to reduce the difference between the projected and actual experience.

SEC. 3. Section 10236 of the Insurance Code is amended to read:

10236. Every long-term care policy and certificate shall be either guaranteed renewable or noncancelable.

(a) ‘‘Guaranteed renewable’’ means that the insured has the right to continue coverage in force if premiums are timely paid during which period the insurer may not unilaterally change the terms of coverage or decline to renew, except that the insurer may, in accordance with provisions in the policy, and in accordance with Section 10236.1, change the premium rates to all insureds in the same class. The ‘‘class’’ is determined by the insurer for the purpose of setting rates at the time the policy is issued.

(b) ‘‘Noncancelable’’ means the insured has the right to continue the coverage in force if premiums are timely paid during which period the insurer may not unilaterally change the terms of coverage, decline to renew, or change the premium rate.

(c) Every long-term care policy and certificate shall contain an appropriately captioned renewability provision on page one, which shall clearly describe the initial term of coverage, the conditions for renewal and, if guaranteed renewable, a description of the class and of each circumstance under which the insurer may change the premium amount.

SEC. 4. Section 10236.1 is added to the Insurance Code, to read:

10236.1. (a) (1) No individual or group long-term care insurance coverage may be offered, sold, issued, or delivered to a resident of this state without the prior approval of the commissioner pursuant to the provisions of this chapter. The commissioner shall review and approve individual and group policy forms and certificates, outlines of coverage, all notices and documents that are required to be given to an applicant at the time of solicitation, advertising materials to be used in this state, and rates and premiums for policies and certificates.

(2) The insurer shall submit to the commissioner an initial rate filing that discloses the assumptions the insurer has used to develop its premium schedule. No approval for a premium schedule shall be granted unless the commissioner certifies that the assumptions the insurer has submitted are reasonable, and that, based upon the assumptions contained in the rate filing and relevant experience data, no rate increase for that policy form will be required. The commissioner, prior to certification, shall utilize ~~an independent actuarial consultant~~ *a contracted actuary* or a department actuary pursuant to subdivision (c) to review the assumptions the insurer has used to develop its premium schedule. Group policy

forms as defined in subdivisions (a), (b), and (c) of Section 10231.6 shall not be subject to the pooling of experience required by paragraph (2) of subdivision (b).

(3) Any insurer offering long-term care insurance for sale in California on a ‘‘guaranteed renewable’’ basis shall also offer for sale and actively market in this state at least one plan of long-term care insurance on a ‘‘noncancelable basis.’’ Insurers are not required to offer for sale a ‘‘noncancelable’’ version of every ‘‘guaranteed renewable’’ policy offered for sale by the insurer. However, at a minimum, insurers shall offer for sale a ‘‘noncancelable’’ version of the most recent and best selling ‘‘guaranteed renewable’’ policy that they offer for sale in this state. The requirements of Section 10235.22 shall not apply to noncancelable plans.

(b) No insurer may increase the premium for a long-term care insurance policy or certificate approved for sale under this chapter unless the insurer has received prior approval for the increase from the commissioner, as follows:

(1) The premium schedule may be subject to one increase upon a determination by the commissioner that the increase is necessary based on the experience of the insurer with the individuals in the class. No approval for an increase shall be granted unless the commissioner certifies that no further rate increase will be required. The insurer may not file for an increase unless the initial premium schedule and the new premium schedule together produce a lifetime loss ratio consistent with Section 10235.22. The insurer shall provide a contingent nonforfeiture benefit upon lapse that shall be available not less than 90 days following any increase in premium rates. The nonforfeiture benefit shall be triggered each time an insurer increases the premium rates. The nonforfeiture benefit shall be a fully paid-up shortened benefit period, and shall be no less than 100 percent of the cumulative premium paid plus no less than 5 percent compounded interest to the date of lapse. The type of nonforfeiture benefit provided shall be the same as benefits purchased under the lapsed contract. Unless

otherwise required, policyholders shall be notified at least 30 days prior to the due date of the premium reflecting the rate increase. The notice shall include a referral to the local Health Insurance Counseling and Advocacy Program or to the toll-free telephone number ~~((800)-434-0222)~~ *((800) 434-0222)* of the Health Insurance Counseling and Advocacy Program.

(2) After the premium has been increased in accordance with paragraph (1), or after any premium increase that ~~occurs after~~ *has been filed with the department on or after* February 25, 1999, and before January 1, 2001, further premium increases are subject to a determination by the commissioner that the increase satisfies the requirements of paragraph (1), that the increase is necessary based on a review of the relevant experience of the insurer, and that the relevant experience is reflected in the assumptions for policy forms currently being marketed. The relevant experience of the insurer shall consist of all of the insurer's individual long-term care policies issued in this state for purposes of developing future morbidity assumptions.

~~(3) Beginning on January 1, 2002, the commissioner shall only approve a premium increase in the same percentage amount as the increase in the index compiled pursuant to subdivision (e). An insurer may choose to increase its loss ratio instead, if that results in a premium increase that is less than the indexed percentage.~~

~~(4)~~

(3) If the commissioner demonstrates, based upon credible evidence, that an insurer has engaged in a persistent practice of filing inadequate initial premium schedules, the commissioner may, in addition to any other authority of the commissioner under this chapter, and after the insurer is afforded proper notice and due process, prohibit the insurer from filing and marketing comparable coverage for a period of up to five years or from offering all other similar policy forms, and may limit marketing of new applications to each policy form subject to recent rate increases.

(c) All actuaries used by the commissioner to review rate applications submitted by insurers pursuant to this section, whether employed by the department or secured by contract, shall be members of the American Academy of Actuaries with at least five years' experience in long-term care insurance industry pricing, and shall be or shall have been an active participant in long-term care insurance actuarial task forces within the last five years. If the department does not have actuaries with the experience required by this subdivision, the commissioner shall contract with ~~independent actuarial consultants~~ *actuaries* to review all rate applications submitted by insurers pursuant to this chapter.

If the department has actuaries that have experience required by this subdivision, but not enough of those experienced actuaries to perform the volume of work required by this subdivision, the commissioner may contract with independent actuaries, as necessary.

The department shall randomly select from the ~~actuarial consultants~~ *contracted actuaries* secured by the commissioner a ~~consultant~~ *contracted actuary* to review a rate application submitted by an insurer pursuant to this section. No ~~actuarial consultant~~ *contracted actuary* randomly selected shall have been involved in any prior consulting and shall not be involved in any concurrent consulting on any actuarial work of any filings of the company whose policies have been submitted for rate review. If that is the case, the department shall randomly select another ~~actuarial consultant~~ *contracted actuary* to perform the rate review. No ~~actuarial consultant~~ *actuary* with whom the commissioner has secured a contract may enter into a consulting relationship with the company whose policies it has reviewed pursuant to this section for two years after the termination of the contract issued by the commissioner. The insurer's identity shall not be revealed to the ~~actuarial consultant~~ *contracted actuary* selected to perform the rate review. All communications between the ~~actuarial consultant~~ *contracted actuary* and the insurer shall be conducted through the department to ensure confidentiality.

The commissioner shall develop standard filing requirements and forms so that all filing information among insurers is consistent.

(d) The filings required by this section shall be kept confidential by the commissioner, staff of the department, and any contract personnel.

~~(e) The commissioner shall collect the experience for all companies selling long-term care insurance in California reported to the National Association of Insurance Commissioners since 1991, and annually after January 1, 2000. The commissioner in consultation with the American Academy of Actuaries shall develop an index to be used to limit premium increases.~~

(e) The commissioner shall annually collect the experience for all companies selling long-term care insurance in California. The Senate Office of Research shall conduct a feasibility study of granting rate increases based on a long-term care utilization index (or indices) of the insured population. The study shall include all of the following:

(1) The index formula.

(2) Specific data requirements from companies for the index calculation.

(3) Consideration for indices based on plan and demographic differences.

(4) The relationship between the index and the amount of the rate increase to be granted.

The Senate Office of Research shall provide a written report to the Legislature by June 31, 2000.

(f) (1) The provisions of this section are applicable to all policies and certificates issued on or after January 1, 2000.

(2) With respect to forms approved prior to January 1, 2000, only those rules in effect prior to January 1, 2000, shall apply, except as provided in paragraph (2) of subdivision (b). However, beginning January 1, 2001, the provisions of this section shall also apply to the forms approved prior to January 1, 2000.

(g) This section shall not apply to life insurance policies and certificates that accelerate benefits for long-term care.

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